

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DONALD LINDSEY,

Plaintiff,

vs.

No. CIV 98-325 BB/ LCS

STATE OF NEW MEXICO, et al.,

Defendants.

**MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

THIS MATTER comes before the Court on Defendants' Motion for Summary Judgment, filed on July 30, 1999. The Court, having considered the Motion, the Martinez report in this case and the applicable law, proposes finding that the Motion is well-taken and recommends that it be granted.

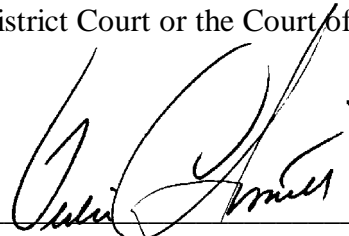
Proposed Findings

On June 4, 1999, the Court entered an Order setting a briefing schedule for the summary judgment motion, requiring Defendants to file their dispositive motions by July 30, 1999, and Plaintiff to respond by August 30, 1999. Plaintiff has not responded as of September 14, 1999. Pursuant to D.N.M.L.R.Civ. 7.5(b), a failure to file a response in opposition to any motion constitutes consent to grant the motion. Accordingly, based upon the local rule, the Court recommends that Defendants' Motion be granted.

In the alternative, accepting as true Defendants' statement of undisputed material facts, the Defendants are entitled to judgment as a matter of law. The Court proposes finding that Plaintiff's claims are procedurally barred because he did not timely request administrative relief. See 42 U.S.C. Sec. 1997e (a) (1). The Court also proposes finding that, based upon the facts in the Martinez report, Defendants Dorsey, Weber and Thomas did not have knowledge of facts which would have allowed them to draw the inference that there was a substantial risk of serious harm occurring so that their actions could be construed as acquiescence or deliberate indifference to such harm. See *Farmer v. Brennan*, 511 U.S. 825, 837-38 (1994). Because the Court proposes finding that Lindsey's claims are procedurally barred, and because it also proposes finding that there is no fact issue as to the state of mind of the Defendants, the Court recommends that their motion for summary judgment be granted.

Recommended Disposition

The Court recommends that Defendants' Motion for Summary Judgment be granted. A party who desires review of the Magistrate Judge's proposed findings and recommended disposition must file written objections with the Clerk of the District Court, 333 Lomas NW, Albuquerque, NM 87102, within 10 days of receiving a copy of them. Failure to file timely objections waives the right to seek review by either the District Court or the Court of Appeals.



LESLIE C. SMITH
UNITED STATES MAGISTRATE JUDGE